UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VISIBLE SYSTEMS CORPORATION,

          Plaintiff

v.

UNISYS CORPORATION,

          Defendant

Civil Action No. 04-CV-11610-RGS

MOTION OF UNISYS CORPORATION TO AMEND ITS ANSWER

Pursuant to Fed. R. Civ. P. 15(a), the defendant, Unisys Corporation, hereby moves to amend its Answer in this case, by adding a counterclaim seeking cancellation, pursuant to 15 U.S.C. § 1119, of one or more of the alleged federal trademark registrations on which plaintiff Visible Systems relies in support of its claims in this case. A copy of the proposed amended pleading is attached hereto as Exhibit A.

As grounds for this motion, Unisys states that based on its investigation to date, the term VISIBLE, as used in Visible Systems' registered trademarks, is a merely descriptive or functional term, and has not become distinctive of Visible Systems' goods or services in commerce, within the meaning of 15 U.S.C. §§ 1051 *et seq.* Under these circumstances, certain of plaintiff's marks incorporating the term VISIBLE, including those marks using the term VISIBLE alone, are not properly subject to federal registration and, where not granted "incontestable" status under applicable law, are subject to cancellation. Federal trademark law gives this Court the power to, *inter alia*, "order the cancellation" of such registrations.[1] The

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[1] *See* 15 U.S.C. § 1119.

purpose of the proposed amendment is to make clear that Unisys seeks to have the Court do just that.

The amendment would not unfairly prejudice the plaintiff, or interfere with the orderly administration and resolution of this case. Discovery is still in its early stages, and moreover the amendment raises no significant new issues, since it has been part of Unisys's defense of the case from the outset that Visible Systems' marks—and in particular the VISIBLE element they utilize—are not distinctive, but descriptive.[2] The amendment simply makes this the basis for a formal request for relief from the Court.

WHEREFORE, Unisys requests that the Court grant leave to file an amended Answer in the form shown in Exhibit A.

Defendant,
UNISYS CORPORATION,
By Its Attorneys,

/s/ Anthony M. Doniger_____ _____ _____
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Dated: March 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Anthony M. Doniger_____
Anthony M. Doniger

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[2] *See, e.g.,* Unisys's Answer dated June 13, 2005, at ¶¶ 13-15.